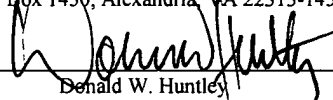




IFW DAC

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage, as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 5, 2009.

  
Donald W. Huntley

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

IN THE APPLICATION OF

CHARLES F. HARRIS JR. ET AL

DOCKET NO: HARRIS-1

SERIAL NO.: 10/709,903

EXAMINER: JACKSON, BRANDON LEE

FILED: JUNE 4, 2004

ART UNIT: 3772

TITLE: VIBRATION DAMPENING DEVICE AND METHOD

WILMINGTON, DE

DATE: August 5, 2009

**RENEWED PETITION UNDER 37 CFR 1.137(b)**

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attn: Office of Petitions

In response to the Decision on Petition dated June 8, 2009, reconsideration of the Decision dismissing the earlier petition under 37 CFR 1.137(b) is respectfully requested.

The applicants hereby confirm that the entire delay in filing the required reply from the due date for the reply until the filing of the present petition was unintentional. As noted previously, the delay resulted from litigation between the applicants. While trying to avoid unduly burdensome attachments to the present Renewed Petition, the applicants attach herewith the initial Complaint of the applicant Harris against the applicant Garnier as "Attachment A." The Complaint, filed on April 27, 2007, details unresolved issues of inventorship and ownership of the present application. With these outstanding issues of inventorship and ownership, the applicant Harris was uncertain

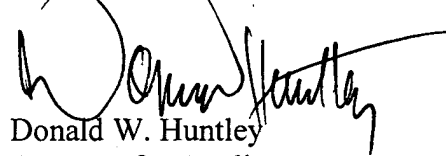
whether he was legally authorized to file a reply to the outstanding Office Action. The lawsuit was terminated in late 2008, and a binding arbitration hearing scheduled for January 22, 2009. The hearing was cancelled late in the day on that date after extensive discussion, and the present petition filed thereafter.

In the event that the present Petition is found not to be unintentional, in the alternative, the handling of the Petition as unavoidable under 37 C.F.R. 1.137 (a) is respectfully requested.

An Amendment responsive to the prior Office Action was previously submitted in the Petition filed on April 7, 2009.

Accordingly, reconsideration and granting of the present Petition is in order, and such action is earnestly solicited. If any issues remain outstanding, the Office is urged to contact the undersigned by telephone to expedite their resolution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald W. Huntley", is written over the typed name.

Donald W. Huntley  
Attorney for Applicants  
Registration No. 24,673  
Telephone: 302-426-0610

Attachment

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IN THE CHANCERY COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY



Charles F. Harris, Jr.,

Plaintiff,

v.

John E. Garnier

Defendant

C.A. No. 2923-VCS

ATTACHMENT A

**COMPLAINT**

**The Parties**

1. Charles F. Harris, Jr. (hereinafter "Plaintiff") is an individual residing at 3207 Stonebridge Boulevard, New Castle, DE 19720.

2. John E. Garnier (hereinafter "Defendant") is an individual residing at 20 Christina Woods Court, Newark, DE 19702.

**Factual Background**

3. Plaintiff invented two vibration dampening devices to aid in the prevention and treatment of impact-induced vibrations in the hand, wrist, elbow upper arm and shoulder which can lead to a painful injury termed "tennis elbow" (the Inventions).

4. Plaintiff tested the Inventions with a number of racquetball players, including the Defendant.

5. After preliminary testing of the Inventions, Plaintiff discussed the details of the Inventions with Defendant, and they agreed to pursue commercialization of the devices. Plaintiff and Defendant retained patent counsel, who prepared and filed two patent applications on behalf of Plaintiff and Defendant.

6. One patent application is entitled "Vibration Dampening Device and Method," and was filed in the U.S. Patent and Trademark Office on December 12, 2003. The application was accorded Serial Number 10/734,322 (the "'322 application").

7. The '322 application relates to the device designated as the "wrist band."

8. A second patent application was also entitled "Vibration Dampening Device and Method," and was filed in the U.S. Patent and Trademark Office on June 4, 2004. The application was accorded Serial Number 10/734,322 (the "'903 application").

9. The '903 application relates to the device designated as the "patch."

10. At the time of execution and filing of the '322 and '903 applications, Plaintiff instructed counsel to designate Defendant as a coinventor on the mistaken belief that such designation was appropriate on the basis of their proposed business partnership.

11. Plaintiff and Defendant jointly formed two corporations, one of which being Wristband Enterprises, L.L.C. (Wristband). Wristband was intended to hold the intellectual property relating to the Inventions for purposes of commercial exploitation and licensing.

12. The other corporation jointly formed by Plaintiff and Defendant was SportsBands, Inc. (SportsBands). SportsBands was intended to handle manufacturing, distribution and sales of the Inventions.

### **COUNT I - BREACH OF ORAL AGREEMENT**

13. Paragraphs 1 through 12 of this Complaint are incorporated as if set for in full herein.

14. Plaintiff and Defendant jointly negotiated an Operating Agreement in 2004 for the operation of Wristband. A draft of that Agreement is attached hereto as Exhibit A.

15. Plaintiff and Defendant negotiated an Memorandum of Understanding in 2006 for the operation of Wristband and SportsBands. A draft of that Memorandum of Understanding is attached hereto as Exhibit B.

16. Plaintiff assigned the '322 application and the '903 application to Wristband on assurance by Defendant that the proposed Agreement would be executed.

17. Since assignment of the '322 application and the '903 application, Defendant has refused to execute the proposed Operating Agreement or Memorandum of Understanding, and refused to permit Plaintiff to participate in the management of Wristband and SportsBands.

18. Defendant has marketed the Inventions, and has refused to render an accounting for the manufacture, use, and sale of the Inventions to the Plaintiff.

### **COUNT II - CORRECTION OF INVENTORSHIP**

19. Paragraphs 1 through 17 of this Complaint are incorporated as if set for in full herein.

20. Plaintiff is the sole inventor of the Inventions.

21. Both the '332 application and the '903 application incorrectly name Plaintiff and Defendant as joint inventors.

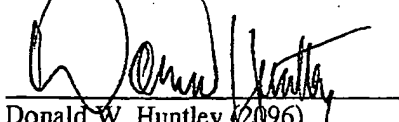
22. Defendant has refused to enter into a Petition to the Commissioner of Patents and Trademarks to correct inventorship on the '332 and '903 applications.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- (a) for the imposition of a constructive trust against Defendant with respect to Plaintiff's share of all funds, assets, receivables, or things of value or other consideration received or to be received by Defendant from the manufacture, use and sale of the Inventions by Defendant;
- (b) for an accounting of the business activities of Wristband and SportsBands;
- (c) for an order compelling Defendant to join in a Petition to the Commissioner of Patents and Trademarks to correct the inventorship of the '332 application and '903 application;
- (d) for compensatory, consequential, and punitive damages;
- (e) for costs of filing suit;
- (f) for attorney fees; and
- (g) for such other relief as this Honorable Court deems just and equitable.

Respectfully submitted,

HUNTLEY & ASSOCIATES, L.L.C



Donald W. Huntley (2096)  
1105 North Market Street

P.O. Box 948  
Wilmington, DE 19899-0948  
([huntley@monopolize.com](mailto:huntley@monopolize.com))  
Attorney for Plaintiff

April 26, 2007

EFiled: Apr 27 2007 9:19 AM  
Transaction ID 14639199  
Case No. 2923



# EXHIBIT A



OPERATING AGREEMENT

OF

WristBand Enterprises, LLC  
A Delaware Limited Liability Company

August \_\_\_\_, 2004

This Operating Agreement (the "Agreement") of WRISTBAND ENTERPRISES, LLC, is made and entered into effective as of the 6th day of August, 2004, by John E. Garnier and Charles F. Harris (the "Initial Members").

WHEREAS:

The Initial Members have caused the Company to be formed as a Delaware limited liability company and have served until the date hereof as the initial Members of the Company.

The purpose of this Agreement is to create a Limited Liability Company Agreement for the Company pursuant to the Delaware Limited Liability Company Act.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby covenanted and agreed as follows:

## 1. DEFINED TERMS

1.1. The terms used in this Agreement, with their initial letters capitalized, shall, unless the context otherwise requires, have the meaning specified in this Article 1.

(a) *Act* means the Delaware Limited Liability Company Act, 6 Del. C. §18-101 *et seq.*, as it may be amended from time to time.

(b) *Agreement* means this Operating Agreement as originally executed and as amended, supplemented or restated from time to time in accordance with the terms of this Agreement.

(c) *Assignee* means a person to whom the rights to distributions of an Interest of a Member has been assigned.

(d) *Available Cash* of the Company means, as of any date, all cash funds of the Company, other than the proceeds of capital contributions, on hand on such date, reduced by payment of or reserve for all expenses of the Company payable as of such time, which is not to be needed to provide for a reasonable reserve for future operating expenses of the Company, as determined by the Manager in the Manager's sole discretion.

(e) *Business* means the creation of commercial wrist, leg, arm, body and back protection products for personal use in sports, industrial, office, medical, travel and animal applications, including intellectual property protection and product licensing.

(f) *Certificate* means the Certificate of Formation pursuant to the Act filed with the Secretary of State of the State of Delaware pursuant to which the Company is organized as a Delaware limited liability company.

(g) *Code* means the Internal Revenue Code of 1986, as amended. All references herein to sections of the Code shall include any corresponding provision of succeeding law.

(h) *Committee* means the Persons appointed in accordance with the Agreement to

be the Manager of the Company when there is more than one Manager.

(i) *Company* means WRISTBAND ENTERPRISES, LLC a Delaware limited liability company.

(j) *Confidential Information* of the Company means its customers and prospects, mailing lists, suppliers' lists, and sources of supply or materials, business practices, computer programs, financial information of any kind whatsoever, pricing and estimating methods, employee information, manufacturing techniques and processes, trade secrets and other confidential knowledge or processes used or developed by any of the Company's employees, consultants or independent contractors of the Company, relating to or dealing with the Company's business or activities and further including, without limitation, the terms and conditions of this Agreement.

(k) *Disability* means a physical, mental or psychological condition that permanently renders a person unable to his or her business affairs. Such determination shall be made by the physician who regularly attends the person, or if there is none, by a physician selected by the Manager.

(l) *Executor* means the executor, administrator, personal representative, trustee or other person in possession of Units that were held transferred to it by a deceased Member.

(m) *First Refusal Offer* means a notice conforming to this Agreement that specifies the terms and conditions of an offer to sell Units of the Company and the other Members.

(n) *First Refusal Price* means the minimum price per Unit under a First Refusal Offer.

(o) *Indemnified Party* means each Manager, officer and Member of the Company.

(p) *Interest* means all the rights and other consequences of membership in the Company, including the right to distributions, profits, losses and other tax attributes, distributions of the assets of the Company upon liquidation, and voting rights.

(q) *Initial Members* shall mean John E. Garnier and Charles F. Harris

- (r) *Interest Holder* means any person who holds an Interest, as a Member or Assignee.
- (s) *IRS* means the Internal Revenue Service.
- (t) *Majority Vote* means the affirmative vote of those owning more than eighty percent (80%) of the Units of the Company that may be voted by their holders.
- (u) *Manager* means such one or more Persons appointed under this Agreement to be the Manager of the Company.
- (v) *Member* means any Initial Member, or any person hereafter admitted to the Company as a Member as provided in this Agreement and shall have the same meaning as the term "member" under the Act, but does not include any Person who has ceased to be a Member of the Company, and shall not include any Person who has assigned his or her Interest, to the extent of such assignment.
- (w) *Membership Interest* means all of the rights and other consequences of membership in the Company, including the right to distributions, profits, losses and other tax attributes, distributions of the assets of the Company upon liquidation, and voting rights.
- (x) *Person* means a natural person, corporation, partnership, joint venture, trust, estate, unincorporated association, limited liability company, or any other juridical entity.
- (y) *Prime Rate* means the prime rate for commercial loans as published in The New York Times on the date on which a sale, loan or other transaction occurs.
- (z) *Regulations* shall mean the regulations promulgated by the United States Department of Treasury pursuant to and in respect of provisions of the Code. All references herein to sections of the Regulations shall include any corresponding provision or provisions of succeeding, similar, substitute, proposed, or final regulations.
- (aa) *Tax Matters Partner or TMP* shall have the meaning given in the Code.

(bb) *Unanimous Vote* means the affirmative vote of the Members holding one hundred percent (100%) of the Units of the Company that may be voted by their Holders.

(cc) *Value* of the Company shall be the fair market value of the intellectual property, plus the book value of all other assets, reduced by all liabilities. The Value of a Member's Interest shall be the proportionate share of the Value of the Company. The fair market value of intellectual property shall be determined by two licensed valuation experts, one each chosen by the Company and by the other person whose interests require the determination of such value at such time. If either expert's determination of value is more than ten percent (10%) greater than the other's, the experts shall select a third valuation expert whose determination shall be final. Book value of the Company's other assets and of its liabilities, shall be determined by the Company's regularly-engaged certified public accountant.

1.2 Usage. Definitions in this Agreement apply to both the singular and plural forms of the defined terms. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, as context requires. "Include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

## 2. ORGANIZATION

2.1 Formation. The Company was formed by the filing of the Certificate by an authorized Person. The Members agree to operate the Company as a limited liability company under the terms of this Agreement and the Act. The business of the Company shall be operated under the name "WristBand Enterprises, LLC"

2.2 Initial Members. Each of the Initial Members is admitted to the Company as a Member effective contemporaneously with the execution by such person of this Agreement.

2.3 Purposes and Scope. The purposes of the Company are to do any and all acts or things that may be incidental or necessary to carry out the Business. The purposes of the Company shall not be extended beyond the Business without a resolution approved by a Majority Vote.

2.4 Duty to the Company. Each Member shall contribute at least sixteen (16) hours of work per month to the advancement of the Business of the Company, reasonable leave for illness and vacation excluded. Except for reasons stated in the preceding sentence, a Member who ceases to satisfy the requirements of this Section shall be treated as if he had died, with such Member's Units thereby offered for sale under the terms of Section 6.3 of this Agreement.

2.5 Registered Office; Registered Agent. The Company's registered office and registered agent in the State of Delaware shall be the office and registered agent named in the Certificate or such other office or registered agent as the Manager may later designate in the manner provided by law.

2.6 Agreement Controls. If any term of this Agreement conflicts with the Act, the terms of this Agreement shall control, except with respect to any matter contained in the Act that cannot be waived or modified by a limited liability company agreement.

2.7 No State Law Partnership. Notwithstanding the treatment of the Company for income tax purposes, the Members intend that the Company not constitute a partnership (including a limited

partnership) or joint venture, and that this Agreement shall not cause any Member to be a partner of, or a joint venturer with, any other Member for any purpose, other than federal and state tax purposes, and this Agreement shall not be construed to suggest otherwise.

2.8 Liability to Third Parties. No Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment, decree or order of a court, except where a Manager or Member has voluntarily acknowledged such liability, for example, by personally guaranteeing a Note or other obligation of the Company.

2.9 Title to Property. The Company shall own all of its real and personal property as an entity and no Member shall have any ownership interest in such property in the Member's individual name or right, and each Member's Interest shall be personal property for all purposes.

2.10 No Partition Allowed. By becoming a Member of the Company, a Member irrevocably waives any right or power that such Person might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution from the Company.

### 3. INTERESTS; CAPITAL CONTRIBUTIONS

3.1 Interests in the Company. The Company shall have one class of Membership Interests, known as Units.

(a) Units shall have one vote each.

(b) Each Unit shall share equally in the distributions of the Company.

(c) The Company shall initially issue one hundred Units as follows:

- (1) Fifty (50) Units to Charles F. Harris; and
- (2) Fifty (50) Units to John E. Garnier.

(d) Additional Units may be authorized and issued under such terms and conditions as set by Majority Vote.

3.2 Initial Members; Capital Contributions. The capital contributions of each Initial Member are set forth on Exhibit C hereto.

3.3 Expenses of Members. Each Member shall be entitled to reimbursement for reasonable and necessary expenses incurred on behalf of the Company which are approved by the other Member.

3.4 Additional Capital Contributions; Loans. No Member or Interest Holder shall have any obligation to make additional capital contributions to the Company, nor any duty to loan funds to the Company nor to guarantee loans to the Company.

3.5 Return of Capital; Interest. No Member or Interest Holder shall have the right to demand or receive the return of any capital contributions to the Company. Except as otherwise expressly provided herein, no Members or Interest Holders shall receive any interest on their capital contributions to the Company or to a capital account, notwithstanding any disproportion therein.

3.6 Transfers. In the event of a transfer of a Unit, the capital account of the transferor shall become the capital account of the transferee to the extent it related to the transferred interest.

3.7 Capital Accounts. A separate capital account shall be maintained for each Member for in accordance with §1.704-1(b)(2)(iv) of the Regulations. Each Member shall have only one capital account, regardless of the number of interests in the Company owned by such Member and regardless of the time or manner in which such interests were acquired by such Member. Pursuant to the basic rules of §1.704-(b)(2)(iv) of the Regulations, the balance in each Member's capital account shall be:



- (a) Increased by the amount of the money contributed by such Member to the capital of the Company and decreased by the amount of money distributed to such Member;
- (b) Increased by the fair market value of each item of property (determined without regard to §7701(g) of the Code) contributed by such Member to the capital of the Company (net of liabilities secured by such property that the Company is considered to take subject to under §752 of the Code) and decreased by the fair market value of each item of property (determined without regard to §7701(g) of the Code) distributed to such Member by the Company (net of all liabilities secured by such property that such Member is considered to assume or take subject to under §752 of the Code);
- (c) Increased by the amount of each item of Company profit or income allocated to such Member;
- (d) Decreased by the amount of each item of Company loss or expense allocated to such Member; and
- (e) Otherwise adjusted in accordance with §1.704-1(b)(2)(iv) of the Regulations.

#### 4. MANAGEMENT

4.1 Appointment of Manager. The Manager of the Company shall initially be John E. Garnier and Charles F. Harris, who shall serve until their death, resignation, removal or Disability, or until they ceases to be Members of the Company.

(a) If a Manager dies, resigns or has a Disability, a new Manager shall be selected by Majority Vote.

(b) Additional Managers may be elected, any Manager may be removed, and any vacancies in the office of Manager may be filled, by Majority Vote.

4.2 Committee. If more than one person is serving as Manager, they shall be known as the Committee. All decisions to be made and actions to be taken by the Committee shall be determined

by vote of a majority of the members serving on the Committee. To the extent authorized by a vote of the Committee, any one member of the Committee may execute any Deed, agreement, indenture or other document on behalf of the Company.

4.3 Fiduciary Relationship. The Manager is a fiduciary for the Members. The Manager has a fiduciary obligation to manage and operate the Company, and to exercise his discretions under this Agreement, in such manner as will serve the best interests of the Company and its Members. In this regard, the Manager shall be guided by, and enjoy all the protection available under, the Business Judgment Rule applicable to directors of corporations under the Delaware General Corporation Law. The Manager may perform any acts which the Manager believes in good faith are in the best interest of the Company, without the need to consult with the Members before any decision.

4.4 Authority of the Manager. Except as limited by Section 4.5 of this Agreement, the powers of the Company shall be exercised by, and the business of the Company shall be managed under the direction of, the Manager, who shall have and exercise all powers necessary, convenient or incidental to accomplish the purposes of the Company, including by way of example:

- (a) Making and performing contracts and other undertakings binding the Company that may be necessary or advisable in furtherance of the purposes of the Company;
- (b) Opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (c) Maintaining the assets, the books and records of the Company in good order;
- (d) Collecting sums due the Company and paying obligations of the Company;
- (e) Prosecuting actions and defending claims on behalf of the Company;
- (f) Making reasonable and equitable valuations and apportionments of the property

regardless of whether the Indemnified Party continues in such capacity at the time any such liability or expense is paid or incurred, and regardless of whether any such action, suit or proceeding is brought by a third party, a Member, another Interest Holder or by or in the name of the Company.

(b) The Company shall pay or reimburse, in advance of the final disposition of the proceeding, expenses incurred by the Indemnified Party in connection with any action, suit or proceeding described hereinabove, against receipt from the Indemnified Party of written confirmation that it will return any amount so advanced by the Company to the extent that it subsequently is determined that the Indemnified Party was not entitled to receive them.

(c) The Company shall pay or reimburse expenses incurred by an Indemnified Party in connection with such person's appearance as a witness or other participation in a proceeding affecting the Company when the Indemnified Party is not a named defendant or respondent therein.

(d) The Manager may cause the Company to purchase and maintain insurance or another arrangement on behalf of the Indemnified Parties against any liability asserted against any Indemnified Party and incurred by any Indemnified Party in that capacity arising out of the Indemnified Party's status in that capacity, whether or not the Company would have the power to indemnify the Indemnified Party against that liability under this Section. The indemnification provided by this Section shall be in addition to any other rights to which the Indemnified Parties may be entitled under any agreement, vote, rule of law or otherwise, both as to actions in the Indemnified Party's capacity as a Manager or any officer of the Company and as to actions in any other capacity, and shall continue as to an Indemnified Party who has ceased to serve in such capacity and shall inure to the benefit of the heirs, executors, successors and assigns of the Indemnified Party.

(e) An Indemnified Party shall not be denied indemnification under this Section because the Indemnified Party had an interest in the transaction with respect to which the indemnifica-

tion applies if the transaction was otherwise permitted by this Agreement.

(f) It is the intent of this Section that the Company indemnify the Indemnified Parties to the maximum extent permitted by law.

4.9 Liability of Manager. No Manager shall be personally liable for the obligations of the Company. No Manager shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for any action taken or failure to act (even if such action or failure to act constituted the simple negligence of that Manager) on behalf of the Company within the scope of the authority conferred on the Manager by this Agreement or by law, unless such act or failure to act was performed or omitted wilfully, intentionally or in bad faith.

4.10 Resignation. A Manager may resign upon written notice to each other member of the Committee, or if there are no other Managers, to each Member.

4.11 Compensation. The Members may, by Majority Vote, authorize a reasonable salary to the Manager for services.

## 5. ALLOCATIONS; DISTRIBUTIONS

5.1 Distributions/Available Cash. The Manager shall determine the amount of Available Cash from time to time and shall report the amount of Available Cash and make any distributions thereof to the Interest Holders no later than ninety (90) days after the end of each quarter. The Manager and the Company shall be under no duty to make distributions except as expressly provided in this Agreement or as determined from time to time by the Manager.

(a) Distributions, when made, shall be made to the Interest Holders in proportion to their Units in the Company; provided, however, that if the Manager determines that an Interest Holder is not able to manage funds due to illness or infirmity, the Manager may, in its discretion, directly apply the distribution for the benefit of such Interest Holder, distribute the distribution to a legal or

natural guardian for such Interest Holder or hold such distribution in escrow for such Interest Holder until such illness or infirmity ends. In the determination of whether an Interest Holder is unable to manage funds due to illness or infirmity, the Manager may rely on the determination of a physician selected by the Manager.

(b) No compensation to a Member who renders services to the Company, nor reimbursement to a Member for expenses incurred on behalf of the Company, shall affect the allocation and distribution of profits or losses of the Company, nor distributions of its Available Cash.

5.2 Allocation of Profit and Loss. Profit and Loss for tax purposes shall be allocated in the same percentages as Available Cash is distributed to Interest Holders for that year.

5.3 Contributed Property and Book-Ups. Income, gain, loss and deduction with respect to any property contributed to the Company shall, solely for tax purposes, be allocated among the Interest Holders to take account of any variation between the adjusted basis of the property to the Company and its fair market value at the date of contribution. If the adjusted book value of any asset is adjusted as provided herein, subsequent allocations of income, gain, loss and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for income tax purposes and adjusted book value as required under §704(c) of the Code and the Regulations.

5.4 Other Adjustments. If any asset of the Company is distributed in kind to Interest Holders, such asset shall be valued on the basis of its fair market value, and any Interest Holder entitled to a partial interest in such asset shall receive that interest as a tenant-in-common with all other Interest Holders so entitled. Unless the Members otherwise agree, the fair market value of such assets shall be determined by an independent appraiser who shall be selected by the Manager. The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be allocated as provided earlier in this Section 5 and shall be properly credited or charged

to the capital accounts of the Interest Holders prior to the distribution of the assets in liquidation.

## 6. DISPOSITION OF INTERESTS IN THE COMPANY

6.1 Transfers by Members. No Member shall sell, transfer or otherwise dispose of any Unit except (1) to an existing Member or (2) upon approval by a Majority Vote.

(a) No Member shall pledge or otherwise encumber all or any part of his Units without the written consent of a Majority Vote.

(b) Approval of a transfer of Interests, admission of an Assignee as a Member or an encumbrance of Units may be granted or withheld in the unrestricted discretion of the Members.

### 6.2 First Refusal Right.

(a) If a Member desires to sell any or all of his Units, the Member shall give written notice to the Company of the Member's intention to dispose of such Units in a First Refusal Offer which shall specify the number of Units proposed to be disposed of, the First Refusal Price per Unit and the other terms and conditions of the proposed sale. Such notice shall constitute an offer to sell to the Company all or any portion of the Units identified therein at the aggregate First Refusal Price and on the terms therein.

(b) The First Refusal Offer may be accepted, in whole or in part, by the Company by giving notice of acceptance to the Member within sixty (60) days after receiving the First Refusal Offer, which notice of acceptance shall specify the number of Units to be purchased by the Company.

(c) The closing of any purchase pursuant to this Section shall be held on the 20th day after the Company gives its notice of acceptance, or the next business day if the 20th day is a Saturday, Sunday or legal holiday, at the Company's principal business office, or at such other time or place as the parties may agree. At such closing, the Member shall execute and deliver to the Company such documentation evidencing the transfer as the Company may reasonably require, and the Company

shall pay the Member ten percent (10) of the purchase price at the time of the transfer, and shall give a Note in a substantially the form set forth in Exhibit A, guaranteed by the other Members, for payment of the remainder of the purchase price in five amortized annual installments at the Prime Rate plus two (2) percent.

(d) If the Company does not give notice of acceptance during such 60-day period, or if the Company gives notice of acceptance with respect to less than all of the Units covered by the First Refusal Offer, the Member may, within the 30-day period immediately after such 60-day period expires, sell all or any part of the Units covered by the First Refusal Offer which are not covered by a notice of acceptance of the Company at a price per Unit not less than the First Refusal Price and on the terms other than price set forth in the First Refusal Offer; provided, however, that the Member shall not sell, assign, transfer, hypothecate, encumber, pledge or otherwise dispose of such Units unless the proposed transferee, as a condition to any such transfer, has consented to be bound by all of the provisions of this Agreement by executing and delivering a written consent thereto in substantially the form of Exhibit B. If the Member does not make such disposition within such 90-day period, no subsequent disposition of any of the Member's Units may be made without again complying with this Section.

6.3 Death of Member. Upon the death of a Member, any Surviving Member shall have the right to purchase the Units of the deceased Member pursuant to this Section.

(a) Within sixty (60) days after a Member has died, any Surviving Member may give written notice to the deceased Member's Executor and each other Member of such Member's interest in purchasing the Units of the deceased Member. A Surviving Member who does not give such notice shall not have the right to purchase the deceased Member's Units under this Section.

(b) If a Surviving Member does give such notice (such Member being known as an

"Offering Member"), unless the parties reach agreement on the terms and conditions of sale, then within ninety (90) days after the death of the deceased Member, the Value of the deceased Member's Units in the Company shall be determined. All costs of determining the Value shall be borne half by the Executor and half by the Offering Members, except that if each Offering Member gives a Withdrawal Notice, the Offering Members shall pay all the costs of appraisal.

(c) Within fifteen (15) days after the Value of the deceased Member's Units has been finally determined, an Offering Member may give notice that he is no longer interested in purchasing the deceased Member's Units ("Withdrawal Notice"). An Offering Member who gives a timely Withdrawal Notice shall not be required to purchase the deceased Member's Units. An Offering Member who does not give a timely Withdrawal Notice shall be required to purchase the deceased Member's Units.

(d) Closing on the sale of the deceased Member's Units shall be held on the 60<sup>th</sup> day after the Value of the deceased Member's Units has been finally determined, or the next business day if the 60<sup>th</sup> day is not a business day, at the Company's principal business office, or at such other date, time or place as the parties may agree. At any such closing:

(1) The Executor shall execute and deliver such documentation evidencing the transfer as the Company and the purchaser may reasonably require, and

(2) Unless the parties agree otherwise, the purchaser shall pay the Member ten percent (10) of the purchase price at closing, and shall give a Note in substantially the form in Exhibit A, secured by a mortgage on all real estate of the Company, for payment of the remainder of the purchase price in five amortized annual installments at the Prime Rate plus two (2) percent.

(e) If there is no Offering Member, or if each Offering Member gives a Withdrawal Notice, then all Units of the deceased Member shall be treated as having been assigned to the heirs,



legatees, trustees or beneficiaries of the deceased Member, who shall be treated as Assignees of the deceased Member's Units. Such Assignees may be admitted into the Company as Members, only upon the approval of a Majority Vote. Notwithstanding the foregoing, upon the death of the last Member, the distributees of his Units, and the Assignees of the Units of any other deceased Member, shall be permitted to become Members of the Company, subject to the following section.

6.4 Agreement of New Member to Be Bound. A proposed transferee of Units, or any other person who is permitted to become a Member, may become a Member only after such transferee or other person has, as a condition of such transfer, executed and delivered a written agreement to be bound by all of the terms of this Agreement, in substantially the form set forth in Exhibit B.

6.5 Assignments by Members. An Interest Holder may assign the rights to distributions with respect to his or her Membership Interest upon prior written notice to the Manager. An assignee of such rights to distributions shall not, unless admitted as a Member of the Company, have any right to inspect the Company's books and records, nor any rights of a Member or a Membership Interest, nor any right to bring a derivative action with respect to the Company. After assigning the distribution rights, a Member shall have no further voting rights with respect to such Units.

6.6 Withdrawal of Member. If a Member transfers all of his, her or its Membership Interests at a time when such Member has a capital account that is less than zero, such Member shall cause to be contributed sufficient cash to the Company to increase such capital account to zero before any transfer of such Units shall be effective. Until such payments have been made, no distributions shall be made with respect to such Units.

6.7 Section 754 Election. If the Company is subject to Subchapter K of the Code, then upon the transfer of a Membership Interest, the Company shall, if requested by a Member, elect under §754 of the Code to adjust the basis of its assets for federal income tax purposes, if the requesting

Member pays the additional bookkeeping and accounting costs resulting from such election.

## 7. DISSOLUTION; MERGER; CONVERSION

7.1 Dissolution. The Company may be terminated and dissolved if, when and under such circumstances as determined by a Majority Vote.

7.2 Termination and Winding up of the Company. If the Company is dissolved, an accounting of the Company's assets, liabilities and operations through dissolution shall be made, and the affairs of the Company shall be wound up and terminated.

(a) The Manager will appoint one or more persons as liquidating trustee of the Company, who shall be responsible for winding up the business of the Company and determining all matters in connection therewith (including arrangements with creditors, sale of assets of the Company and the amount of reserves to cover contingent liabilities) as it deems advisable subject to the standards of the Business Judgment Rule under Delaware corporate law. The liquidating trustee may liquidate the assets of the Company as promptly as consistent with obtaining fair value therefor, and the proceeds, to the extent sufficient, will be applied first to discharge the Company's liabilities to its creditors (including Interest Holders who are creditors) in the order of priority as provided by law, and thereafter to the Interest Holders in proportion to their Units.

(b) After the assets of the Company have been distributed, the Company shall terminate under the Act. Any funds that are thereafter released from the cash reserve fund shall be distributed to the Interest Holders in proportion to their Units as of the termination of the Company.

7.3 Merger. The Company shall merge with or into another entity under such terms and conditions as set by a Majority Vote.

7.4 Conversion. The Company shall be converted into another entity, or change its domicile, under such terms and conditions as set by a Majority Vote.

8. **BOOKS AND RECORDS; BANK ACCOUNTS**

8.1 Books. The Company shall maintain its books and records at its principal place of business. Such books and records shall be kept on the basis of a calendar year and will reflect all Company transactions and be appropriate and adequate for conducting the Company's business. The Company shall furnish, at its expense, to each Member a balance sheet, an income statement, and an annual statement of source and application of funds of the Company (all of which may be unaudited) and shall make reasonable efforts to cause to be delivered to each Member on or before March 15 of each year such financial statements for the immediately preceding calendar year. In addition, the Company shall prepare and furnish to each Member, at least once each year, a report providing an analysis of the Company's operations during the prior calendar year. Each Member, at his, her or its own expense, shall have the right upon reasonable notice to inspect the books and records of the Company during business hours at the principal place of business of the Company.

8.2 Bank Accounts. All funds of the Company will be deposited in its name in one or more accounts maintained with such bank or banks selected by the Manager. The funds of the Company shall not be commingled with the funds of any other Person. Checks shall be drawn upon the Company account or accounts only for the purposes of the Company and shall be signed by the Manager or an officer designated by the Manager.

8.3 Preservation of Records. For the term of the Company and for six (6) years thereafter, the Manager shall maintain and preserve all books of account and other relevant documents.

8.4 Tax Elections. The Members intend that the Company shall be treated as a partnership for federal income tax purposes. Otherwise, and except as specifically otherwise provided in this Agreement, all elections required or permitted to be made of the Company under the Code shall be made by the Manager in such manner as in the Manager's reasonable judgment shall be most

advantageous to the Members. Each of the Members shall, upon request, supply the information necessary to properly give effect to any such election.

8.5 Tax Matters. If the Company is subject to Subchapter K of the Code, John E. Garnier shall be the initial Tax Matters Partner. The Manager may designate a different Tax Matters Partner by giving written notice to the existing TMP and following such other procedures required by the Code. The TMP may resign by giving written notice to the Manager and following such other procedures required by the Code. If there is a vacancy in the position of TMP, whether due to resignation, death or Disability, the Manager shall designate a new TMP.

(a) The TMP is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees to cooperate with the TMP and to do or refrain from doing any or all things reasonably requested by the TMP to conduct such proceedings. In addition, each Member agrees that (1) it will not file a statement under §6224(c)(3)(B) of the Code prohibiting the TMP from entering into a settlement on its behalf with respect to Company items, (2) it will not form or become a member of a group of Members having a five percent (5%) or greater interest in the profits of the Company under §6223(b)(2) of the Code, and (3) the TMP is authorized to file a copy of this Agreement with the IRS pursuant to §6224(b) of the Code if necessary to perfect a Member's waiver of rights hereunder.

(b) The TMP will give notice to all the Members within thirty (30) days (in advance, unless impossible), of:

(1) The receipt by the Company of notification from the IRS of its intent to conduct an audit of the Company;

- (2) The receipt of formal Company administrative adjustments pursuant to §6223 of the Code;
  - (3) Any settlement by the TMP with the IRS or any settlement by any Member with the IRS of which the TMP receives notice;
  - (4) Notice of the Company's filing of a petition for judicial review of any final Company administrative adjustment or an appeal of a judicial decision;
  - (5) Notice of the Company's decision not to file a petition for judicial review of any final Company administrative adjustment; and
  - (6) Any other information required by §6223(g) of the Code.
- (c) The Company will reimburse the TMP for all expenses incurred in connection with any administrative or judicial proceeding hereunder.

## 9. COVENANT OF MEMBERS AGAINST COMPETITION

9.1 No Person, while a Member or Assignee, or for five (5) years thereafter, shall, without the prior written consent of the Company given by Unanimous Vote, directly or indirectly, as shareholder, owner, principal, agent, officer, director, employee, consultant, lender, or in any other capacity, alone or in association with any other Person (a) carry on, be engaged, connected or take part in, render services to, or own, share in the earnings of, or invest in, any Person engaged in competition with the Business of the Company; (b) induce or attempt to influence any employee, agent or representative of the Company to terminate such person's employment, consulting or other relationship with the Company; or (c) request, advise or suggest to any present or past customer or client of the Company to withdraw, curtail or cancel any business with the Company, or otherwise solicit any such past or present customer to terminate, reduce or otherwise alter, to the Company's detriment, its relationship with the Company.

9.2 No Member shall at any time (a) disclose, communicate or divulge to or use for Member's benefit or for the direct or indirect benefit of any other person, firm, or entity (other than to or for the benefit of the Company), or (b) reproduce, copy or otherwise make available (other than to or for the benefit of the Company), in whole or in part, any Confidential Information of the Company made known to, learned or acquired by Member while an owner or Assignee of Units, until such information shall have first become public knowledge without violation by Member of his duty of confidentiality to the Company.

9.3 The covenants in this Article do not prohibit any Member from ownership in a publicly-traded corporation.

9.4 Each Member acknowledges that the restrictions contained in this Article, in view of the nature of the business of the Company, are reasonable and necessary in order to protect the legitimate interests of the Company and that any violation would result in irreparable injuries to the Company and monetary damages would be inadequate to compensate the Company for such violation and each Member therefore acknowledges that, in the event of his violation of such restrictions, the Company shall be entitled to obtain from any court of competent jurisdiction preliminary and permanent injunctive relief, as well as damages and an equitable accounting of all earnings, profits and other benefits lost in connection with such violation, which right shall be cumulative and in addition to any other rights or remedies to which the Company may be entitled. If for any reason the restrictions contained in this Section should be adjudged unreasonable in any proceedings, then the period of time or scope of such restrictions (or both) shall be reduced in time or scope (or both) so that such restrictions may be enforced in such manner as is adjudged to be reasonable.

## 10. MEETINGS AND ACTIONS

10.1 Actions of Members. Any action required or permitted to be taken by the Members

shall be taken by one or more written consents describing the action taken, signed by such number of Members entitled to vote and delivered to the Manager for inclusion in the minutes or for filing with the Company records. Such action is effective when sufficient Members have signed and delivered the consent, unless the consent specifies a different effective date. No meeting shall be required to take any action required or permitted to be taken by the Members under this Agreement.

#### 10.2 Meetings.

(a) Meetings of the Members or the Committee may be held at any time or place in Delaware whenever called by a member of the body whose meeting is to be called. Notice of a meeting shall be given by the person calling the meeting at least seven (7) days before the special meeting, unless all members of the Committee waive in writing their right to such notice. A majority in interest of Members or a majority of all members of the Committee shall constitute a quorum.

(b) Telephonic Meetings. Persons entitled to attend a meeting may participate in a meeting thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this by-law shall constitute presence in person at such meeting.

(c) Conduct of Meeting. Meetings shall be presided over by the Manager or in his absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

#### MISCELLANEOUS

10.3 Complete Agreement. This Agreement and the Certificate constitute the complete and exclusive statement of the agreement among the Members and replace and supersede all prior agreements by and among the members or any of them. No representation, statement, or condition or warranty not contained in this Agreement or the Certificate shall be binding upon the Members or have

any force or effect whatsoever.

10.4 Governing Law. This Agreement and the rights of the parties hereunder will be governed by, interpreted and enforced in accordance with the laws of Delaware. All disputes relating to the construction and application of this Agreement shall be determined before the courts of the State of Delaware or in the Federal Court for the District of Delaware, except that no judicial proceeding may be instituted among the Members until the parties have made a good faith effort to resolve all disputes by mediation.

10.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Members and their respective distributees, successors and assigns.

10.6 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

10.7 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision will be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and all other provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. In lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.8 Multiple Parts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

10.9 Additional Documents and Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or



appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and the transactions contemplated hereby.

10.10 No Third Party Beneficiaries. This Agreement is made solely among and for the benefit of the Members, and no other persons shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

10.11 Notices. All notices or other communications made under this Agreement shall be in writing. Such communication shall be made by personal delivery, facsimile transmission or by regular mail, postage prepaid, to any Member at the address for such Member on the records of the Company.

10.12 Amendment. All amendments to this Agreement must be in writing and approved by a Majority Vote.

IN WITNESS WHEREOF, this Operating Agreement has been executed by each Member, and by the Company itself, as of the date hereinbefore provided, each intending to be bound thereby. The execution of this Agreement by the Initial Members also constitutes their execution of this Agreement on behalf of the Company, so that the Company itself is also a party to this Agreement.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Charles F. Harris, individually and as a  
Member and Manager

\_\_\_\_\_  
Witness

\_\_\_\_\_  
John E. Garnier, individually and as a  
Member and Manager

EXHIBIT A  
OF  
OPERATING AGREEMENT  
OF  
WristBand Enterprises, LLC

FORM OF INSTALLMENT NOTE  
TO OPERATING AGREEMENT

INSTALLMENT NOTE

\$ \_\_\_\_\_

[Date]

FOR VALUE RECEIVED, \_\_\_\_\_ (the "Maker") hereby agrees to pay to \_\_\_\_\_ (the "Payee"), in legal tender of the United States of America, the principal amount of \$ \_\_\_\_\_, together with interest on the unpaid balance of such principal amount from the date hereof at the \_\_\_\_\_ percent, compounded annually. Payment of principal and interest shall be made in five equal annual amortized installments on each of the first five anniversary dates of this Installment Note, without presentment, demand, protest or notice of any kind, all of which are hereby waived by the Maker. Interest shall be computed on the declining principal balance based on a 360-day year for the actual number of days elapsed. Payment of principal and interest in respect of this Installment Note shall be made in immediately available funds by certified or official bank check mailed to the address or bank designated by the Payee at least 10 days prior to any payment date hereunder.

The Maker may prepay any or all of the principal amount of this Installment Note (together with accrued and unpaid interest to the date of such prepayment) at any time without a prepayment penalty after giving notice to the Payee at least three days prior to such prepayment.

If one of more of the following events of default occurs:

- (a) The Maker defaults in payment of any principal or interest on this Installment Note and such default continues for a period of 30 days after notice thereof from the Payee;
- (b) The Maker pursuant to or within the meaning of any Bankruptcy Law (as hereinafter defined) commences a voluntary case or proceeding, consents to the entry of an order for relief against it in an involuntary case or proceeding, consents to the appointment of a Custodian (as hereinafter defined) of it or for all or substantially all of its property or makes a general assignment for the benefit of its creditors; or
- (c) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that is for relief against the Maker in an involuntary case or proceeding, appoints a Custodian for the Maker or for all or substantially all of its property or orders the liquidation of the Maker, and in any such case the order or decree remains unstayed and in effect for 60 days;

then the unpaid principal amount of this Installment Note, together with interest thereon, shall become immediately due and payable upon declaration to that effect delivered to the Maker by the Payee. No

delay by the Payee in giving notice or in exercising its rights in the event of a default shall operate as a waiver thereof. "Bankruptcy Law" means Title 11, U.S. Code or any similar Federal or state law for the relief of debtors. "Custodian" means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

If the principal amount of this Installment Note or the interest thereon is not paid when due, the Maker shall pay all costs of collection, including reasonable attorney's fees, relating thereto.

No Shareholder, officer or director, as such, of the Maker or any successor corporation, shall have any personal liability in respect of the Maker's obligation under this Installment Note by reason of his or its status as such Shareholder, officer or director.

This Installment Note shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of law rules.

IN WITNESS WHEREOF, the Maker has caused this Installment Note to be duly executed as of the date and year first above written.

EXHIBIT B  
OF  
OPERATING AGREEMENT  
OF  
WristBand Enterprises, LLC

CONSENT TO OPERATING AGREEMENT

[DATE]

WristBand Enterprises, LLC, LLC  
and [New Member]

Dear Sirs:

The undersigned hereby acknowledges receipt of a copy of the Operating Agreement of WristBand Enterprises, LLC, LLC dated as of \_\_\_\_\_, 2004, and represents that he is fully familiar with the terms thereof, all of which are incorporated herein by reference. Capitalized terms used herein shall have the same meaning as in the Operating Agreement.

As a condition to the transfer of shares of Units in the Company to the undersigned, the undersigned hereby ratifies, confirms, adopts and agrees to be bound by and to hold the Units subject to all of the terms and conditions of the Operating Agreement. The undersigned further acknowledges that by executing this consent he hereby becomes a party to such Operating Agreement, and by way of illustration, agrees that he will dispose of Units only in accordance with the terms of the Operating Agreement.

Signature

EXHIBIT C  
OF  
OPERATING AGREEMENT  
OF

CAPITAL CONTRIBUTIONS OF INITIAL MEMBERS

Member	Total Capital Contribution	Unpaid Portion
Charles F. Harris	\$100.00	0%
John E. Garnier	\$100.00	0%

EFiled: Apr 27 2007 9:19 AM  
Transaction ID 14639199  
Case No. 2923



# EXHIBIT B

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made this \_\_\_ day of \_\_\_, 2006 by and among John Garnier ("Garnier"), Charles Harris ("Harris"), Wristband Enterprises, LLC (the "LLC"), and Sportsbands, Inc. (the "Corporation"), their successors in interest and, assigns. The LLC and the Corporation are herein collectively referred to as the "Entities".

Whereas, Garnier and Harris applied for two patents as co-inventors of two products (the "Band", application number US10/734322, filed 12-12-03; and the "Patch", application number US10/709903, filed on 6-4-04);

Whereas, Garnier and Harris assigned all patent rights to the Band and the Patch to the LLC;

Whereas, Garnier and Harris are engaged in a variety of disputes concerning what was originally a common business enterprise;

Whereas, this Memorandum of Understanding is intended to be a binding agreement among the Parties. This Memorandum of Understanding outlines the general terms of the proposed settlement (the "Settlement") and is intended to be supplemented by a more formal agreement, embodying the terms set forth herein and such other and consistent terms as are agreed upon by the parties (collectively, the "Settlement Documents").

Now therefore, in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, being paid by Garnier and Harris to the LLC, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Entities assign the patents, should they be issued, and/or all intellectual property rights, title and interest in the Band and the Patch to Harris and Garnier as equal tenants in common, subject to certain terms and conditions set forth herein so that Harris and Garnier may independently produce and market products based on the patent applications (the "Licenses");
2. Each party may independently pursue domestic and non-domestic intellectual property protections; each bearing their own cost; including, but not limited to any costs required to maintain any patent protection.
3. All products that either Harris and Garnier produce in conjunction with this Agreement will be serially numbered for merchandise tracking, whereby Garnier and Harris will each have a unique identifying sequence within the serial number;
4. The LLC, Garnier and Harris mutually agree (a) not to interfere with any party hereto in all elements of the business cycle; including, but not limited to procurement of materials, manufacturing and distribution; and (b) not to commercially disparage any party hereto nor any product produced hereunder;

5. The LLC, Garnier and Harris shall each indemnify and save harmless the other two parties hereto from any claims and / or liability of any kind arising *out of or* concerning any products produced pursuant to the Licenses, including, but not limited to products liability, copyright and/or trademark infringement;

6. Intentionally omitted.

7. The LLC, Garnier and Harris shall each provide quarterly accounting reports to the other two parties hereto to ensure enforcement of paragraph 6 above, to support claims made under paragraph 10 below, and to ensure that the parties are maintaining adequate business records;

8. In recognition of Harris' ownership of the LLC's former business location, and his possession of the assets of the LLC, Harris shall timely provide access to the location and/or the site where the LLC's assets are maintained to allow Garnier and the LLC to prepare a current accounting and inventory of all business assets, as well as the return (or compensation for the loss) of certain of Garnier's personal items;

9. In recognition of the ongoing LLC accounting dispute, all business enterprise items relating to the Band and the Patch, including, but not limited to, materials, customer files, software, and manufacturing tools, shall be deposited with a mutually acceptable third party until such time as the ongoing accounting dispute is resolved; *thereafter, the parties shall jointly proceed to dissolve the Entities.*

10. The parties agree to binding arbitration in New Castle County within 24 months of the effective date of this Agreement to resolve all LLC accounting disputes, *including any amounts owed to any current or former distributors.*

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11. The parties intend this Agreement to be binding upon their respective heirs, personal representatives, successors and assigns;

12. This Agreement shall be construed and enforced in accordance with the laws of the State of Delaware.



13. This Agreement constitutes the full and complete agreement between the parties hereto and the subject matter hereof and supersedes all prior written or oral negotiations, commitments or agreements between the parties, including without limitation any negotiations, commitments or agreements.

14. The parties hereto can execute this agreement in counterpart.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year aforesaid.

Sealed and Delivered in  
the presence of:

Witness

John Garner

Witness

Charles Harris

Witness

Wristband Enterprises, LLC

BY:

Witness

Sportbands, Inc.

BY:

BY: